

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DEMETRIUS HILL,

Petitioner,

v.

**CIVIL ACTION NO. 3:06-CV-136
(BAILEY)**

**WARDEN HAYNES,
A W GILL, WARDEN DRIVER,
CAPT. ODDO, LT. CLEMENS,
LT. GIFFORD, LT. TRAIT,
C.O. SPOTLAN, FOSTER,
C.O. MORGAN, COUNSELOR
MORRERO, and ETRIS,**

Respondents.

ORDER ADOPTING AMENDED REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on May 12, 2011 [Doc. 91]. The magistrate judge then filed an Amended R & R on May 19, 2011. In that filing, the magistrate judge recommended that this Court deny plaintiff's Motion for Declaratory Relief [Doc. 80].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the

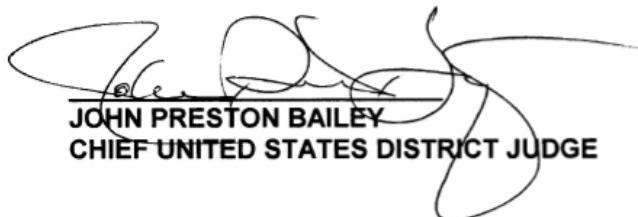
factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within ten (10) days of receipt of the R & R, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket shows Darrel W. Ringer, counsel for the plaintiff, received electronic notice of the filing of the Amended R & R on May 19, 2011. Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the R & R, it is the opinion of this Court that the Magistrate Judge's Amended Report and Recommendation [**Doc. 95**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** plaintiff's Motion for Declaratory Relief [**Doc. 80**].

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: June 13, 2011



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE